

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. 72064

Karen Treat

2610 Holly Beach Road

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on May 19, 2010 for a Hearing on a citation for violations under the Baltimore County Code (BCC) section 35-2-301, 304, failure to obtain valid building permit for pool and deck around pool on residential property known as 2610 Holly Beach Road, 21221.

On April 29, 2010, pursuant to § 3-6-205, Baltimore County Code, Inspector Gary Hucik issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$1,000.00 (one thousand dollars).

The following persons appeared for the Hearing and testified: Karen Treat, Respondent represented by Arnold E. Jablon, Esquire with, Raymond S. Wisnom Jr., expert witness and, Gary Hucik, Baltimore County Building Inspections Inspector.

After proper consideration of all the evidence presented, the Hearing Officer finds:

A. A Correction Notice was issued on March 11, 2010 requesting that Respondent obtain a building permit for pool and deck. This Citation was issued on April 29, 2010.

B. Inspector Gary Hucik testified that this property has an above ground pool and deck in the rear yard, located 18 inches from the fence. The deck was built this summer and the pool was installed last summer. He was not able to find any record of permits for the pool or the deck. Photographs in the file show a tidy above-ground pool with a small white deck with attached steps and railing.

C. Respondent's attorney, Arnold Jablon, argued that the Citation is invalid because it cites provisions requiring permits for structures and buildings, and the pool and deck are not buildings.

D. Respondent Karen Treat testified that there was an above-ground pool in the rear yard when she bought the property in 1999. It was damaged by debris during Hurricane Isabel in 2004 and had to be replaced in 2005. She testified that the original pool was 18x33 and she replaced it with a 12x24 foot pool, in the same location. She further testified that she called Baltimore County's Department of Permits and Licensing and was told she didn't need a permit because it was a replacement for the other pool.

E. Raymond Wisnom testified that during the period after Hurricane Isabel he was a supervisor in the Baltimore County Department of Permits & Development Management, and that at the direction of the County Executive, the Department was doing everything possible to expedite and assist rebuilding after the hurricane. He testified that the Department was waiving permit fees for this area of Baltimore County, and was also waiving permit requirements for reconstruction of accessory structures.

F. Respondent Karen Treat testified that for the deck and steps attached to the pool, in 2006 she hired a licensed contractor to supply and construct the deck. She provided a copy of the contract/proposal which states in part, "We hereby propose to furnish the materials, any needed permits and perform the labor needed...." She testified that she relied on the contractor to obtain any necessary permits and inspections, and that she is willing to let the County inspect the deck if there is any concern about safety. Attorney Jablon stated that he tried to contact the contractor prior to this Hearing without success. He further questioned whether the County keeps records for permits for a long enough period to be sure that a permit was not in fact obtained by the contractor, and argued that in any event a permit was not required.

G. Based on the evidence presented, the pool was a replacement constructed in 2005 and the deck and steps was a minor addition in 2006. The complaint received by the department incorrectly claimed that the deck was built in 2009 and the pool in 2008. The usual permit requirements were being modified or waived for properties in this area of Baltimore County after Hurricane Isabel to facilitate rebuilding, and it is reasonable to conclude that Respondent did in fact obtain verbal permission to replace the pool without a permit. Construction of the additional decking and steps required a building permit but it is not fully clear whether one was requested by the contractor or whether the verbal permission could reasonably have been considered to cover the deck. In any event, the pertinent issue is safety, and Respondent has agreed to cooperate with an inspection and make any necessary corrections. This Order will therefore provide for reasonable conditions for correction, as authorized by BCC 3-6-207.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$100.00 (one hundred dollars).

IT IS FURTHER ORDERED that the civil penalty will be RESCINDED and reduced to zero dollars if the property owner allows County inspection of the deck structure AND makes any corrections that may be required to pass such inspection, by August 1, 2010.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty, as authorized above, shall be imposed and placed as a lien upon the property.

ORDERED this 2nd day of June 2010

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

NOTICE TO RESPONDENT: The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.

